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HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench : Hon'ble Shri Justice Vijay Kumar Shrivastava

WRIT PETITION NO. 5132 OF 2005

PETITIONER Priyadarshini Griha Nirman Sahkari Samiti Maryadit, Raipur, at 445-B, Priyadarshini Nagar, Raipur, C.G., through its President Shri Rajesh Shrivastava,Raipur, C.G.

Versus

RESPONDENTS

1. P.C. Shukla, aged 69 years, s/o. Late Shri B.P. Shukla, r/o. 469, Priyadarshini Nagar, Ring Road No.1, Raipur, CG.
2. Municipal Corporation, Raipur, through its Commissioner, Raipur, C.G.
3. Commissioner, Municipal Corporation, Raipur, CG.

Present :-

Shri Bishma Kinger, learned counsel for the petitioner.

Shri Gautam Bhaduri, learned counsel for respondent No.1.

Shri H.B. Agrawal, learned Sr. Advocate with Shri Manish Agrawal, learned counsel for respondents No.2 and 3.

ORAL ORDER

(Passed on 2nd February, 2007)

This petition under Article 226/227 of the Constitution of India has been preferred seeking following relief :

> " The respondents are restrained from taking any action or step that may directly or indirectly affect adversely the interests of the petitioner and also other group members in respect of the said septic tank unless and until all the parties involved may mutually and in writing decide otherwise."

2) The petitioner is a registered society who sold plot No.469 to respondent No.1 and thereafter constructed the house for him under certain conditions and agreement. Petitioner society also constructed houses under various agreements for other plot owners. For ten

adjoining plots, independent ten houses having common septic tank have been constructed by the petitioner. The common septic tank was constructed inside the plot of respondent No.1. Respondent No.1 feeling offended with nuisance of common septic tank requested the petitioner for shifting the same and to solve his problem, but his complaint was not adhered to by the petitioner, therefore, he reported the matter to Municipal Corporation, Raipur. As a result of the said complaint, Commissioner, Municipal Corporation, Raipur, had issued order dated 30-9-2005 (Annexure-P/4) whereby petitioner was directed to construct separate septic tanks for other nine house.

3) Respondent No.1 contested the petition *inter alia* on the ground that without his knowledge and permission a common septic tank has been constructed by the petitioner in his land, which is causing inconvenience to him, therefore, in order to avoid consuming foul smell and polluted air, he first represented his grievances before the petitioner, who did not care to solve it, therefore, he reported the matter to Municipal Corporation, Raipur, who, in accordance with the Municipal law, issued the impugned order. Respondents No.2 and 3 also contested the petition. They also raised objection that if petitioner is aggrieved by order of the Commissioner, he should have preferred appeal as provided under Section 403 of the Municipal Corporation Act, 1956 (for brevity "the Act").

4) Although petitioner along with his petition annexed some documents, but did not file those documents which may establish sanction of any authority to construct a common septic tank for ten adjoining independent houses. Petitioner also failed to file any agreement to show that respondent No.1 gave his consent to build a common septic tank for other adjoining houses in his own plot. Even sale deed or document filed by the petitioner did not unveil that respondent No.1 was

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willing or has knowingly allowed construction of a common septic tank for other adjoining nine houses in his plot. Respondent No.1 along with his return has filed occupation report, map of his house and certificate issued by the petitioner. All these documents also did not disclose that common septic tank was constructed with permission of respondent No.1.

5) It is not out of place to mention that respondent No.1 initially approached the petitioner for his grievances and thereafter he lodged a complaint before the Commissioner, Municipal Corporation, Raipur. Section 195 of the Act empowers the Commissioner to pass orders for removal of latrine and sewage. Under Section 403 of the Act, a provision for appeal has been made and any notice or order issued under Section 195 of the Act, has been made appealable, therefore, Annexure-P/4 was appealable in accordance with Section 403 of the Act.

6) Evidently, there is no material to show that a common septic tank in plot of respondent No.1 has been constructed with consent & permission of respondent No.1 and even otherwise no prudent person can agree to it.

7) It is apparent that the impugned order in absence of proper hearing will cause prejudice to those other nine persons whose sewage line is attached with this common septic tank. The Commissioner, Municipal Corporation, Raipur, (respondent No. 3) shall serve show cause notices to other nine occupants and shall form his opinion after affording opportunity of hearing to them or shall inspect the spot for forming his opinion and record his finding within 15 (fifteen) days, thereafter forthwith to pass orders in accordance with Section 195 of the Act and to implement it in accordance with the provisions of the Act. During the above period of 15 (fifteen) days, if petitioner or other interested person raises any

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objection that may also be considered to form opinion as required under the Act.

8) With the aforesaid directions, the petition stands disposed of.

Sd/-
V.K.Shrivastava
Judge

Raju